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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,064

10/02/2003

Thomas Ross

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26831

7590

08/10/2006

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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/676,064	Applicant(s) THOMAS ROSS	
	Examiner James L. Swiger	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/9/2006 have been fully considered but they are not persuasive.

With regards to the arguments in reference to the Michelson reference '721, the rejection still stands. Despite that the Michelson locking mechanism may appear to be generally circular, having the cutouts or notches in the actual element qualify it as to being elongated. The cut out portions make one side shorter than the other, making the entire piece elongated. Figure 16, for example, would be considered elongated with notches 22 taken out. With regards to the *positive positioning structure* the claim still reads on what is selected in the previous non-final office action. A structure that *causes* positive positioning may be the actual tool as noted before. The tool itself creates positive positioning on the locking element. Positively positioning is considered to mean substantially the same as "holds" since both hold the element in place. Also the amendment to a "plate" still reads on the reference, as a plate was disclosed previously.

With regards to the arguments in view of the Evans et al. reference, the reference still meets the claim limitations of having at least one projection and at least one recess that could snap the locking element into place. The ramp may aid in this process. See office action below.

Applicant's arguments with respect to claims 2-3 and 18-19 have been considered but are moot in view of the new ground(s) of rejection.

In light of the above reasons, the following rejections still apply:

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, 12-13, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (U.S. Patent No. 6,193,721). Michelson discloses a device having an anterior cervical plate (Fig. 1), having a lower surface (210) and an upper surface (39), at least one receiving area (Fig. 6, 20) that may be considered recessed and between two screw holes (Fig. 2, 6), and a locking element (Fig. 16) that may be positioned as such to secure the plate screws from an unlocked (holes completely uncovered) position, to a second, locked position (Fig. 40), that is capable of securing bone screws so they cannot back out of the plate once it has been secured to the patient. Michelson also discloses a device having at least one tool opening (24/27) for receiving a tool to turn the locking element and a positive positioning structure (220) to positively position the element in a second position. This positive positioning structure is capable of enabling the structure to be secured and held into a second position. Also disclosed is an element capable of being a separate post, also capable of being located in both the through hole and opening (for example, Fig. 2, hole 6), also capable of securing plate and where the locking element can pivot relative thereto.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson '721 in view of Gianetti (US Patent 6,571,671). Michelson '721 discloses the claimed invention except for a plate having a raised boss and a locking element with an opening pivotally mounted on the raised boss. Gianetti discloses a device with a portion that may be considered a locking element having a raised boss (60). Note that in the reference, the item 60 is referred to as a detent that fits into a corresponding groove or a hole-like portion (56) in what is considered a plate, or plate surface (34). As viewed, the reference notes that they use a spring, however they are interpreted as "extended" into the plate hole portion (56). The purpose of these two portions interfacing is to provide a tighter, locking fit as the two portions pivot relative to one another. See Col. 7, lines 50-67 through Col. 8 lines 1-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Michelson having at least a boss extending into a hole in the plate in view of Gianetti to better secure the locking portion relative to the plate.

Claims 6-11 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson '721 in view of Evans et al.

Michelson discloses the claimed invention except for one of the receiving area and bottom of the locking element having at least one projection, the other of the receiving area and bottom of the locking element having at least one recess which is

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positioned to receive the projection and thereby snap the locking element onto the receiving area into the second position by using a ramp.

Evans et al. disclose a device having at least one projection (63) on the receiving area (61), that is capable of being moved via a second positioning over a ramp (94 and 95) that is recessed relative to the projections and are to be snapped into a recessed area (96). This ensures that the two objects are capable of alignment and are firmly secured in place (Col. 6, lines 63-58 and Col. 7, lines 1-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Michelson having at least one projection and an opposing receiving area that uses a ramp in view of Evans et al. to more firmly secure and align the two parts of the device in use.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 8/6/06

JLS


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER